

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**ANTICIPATORY BAIL APPLICATION NO.1163 OF 2023
WITH
INTERIM APPLICATION NO.2112 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.1163 OF 2023**

1. Shekar Manja Naik
2. Shobha Shekar Naik

...Applicants

Versus

The State of Maharashtra

...Respondent

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PARAB

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Mr. Deeraj Dwivedi with Ms Noella Misquitta i/b. Mr. Pankaj Dwivedi
to the Applicants.

Mr. S.V. Gavand, APP for the Respondent -State.

Mr. Vishal M. Deshmukh for Respondent Nos.2, 3 and 4.

Mr. Suraj Raut, API, Dindoshi Police Station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 24th JULY, 2023.

P. C. :-

1. At the outset, learned counsel for the Applicants seeks
leave to implead the First Informant and two others as party
Respondent Nos.2, 3 and 4. Leave is granted. Cause title be amended
accordingly.

2. Mr. Vishal Deshmukh, learned counsel waives service of
notice on behalf of newly added Respondent Nos.2, 3 and 4.

3. This is an application under Section 438 of the Cr.P.C. filed by the aforesaid Applicant seeking pre-arrest bail in Crime No. 1187 of 2022 registered with Dindoshi Police Station, Mumbai, for the offences punishable under Sections 406, 420, 465, 468 and 471 r/w. 34 of the IPC and Sections 63 and 69 of the Copyright Act, 1957.

4. By order dated 20/04/2023 this Court had granted interim bail to the Applicants and had requested Mr. S.V. Gavand, learned APP to intervene in the matter in arriving at an amicable settlement. Learned APP states that the parties have arrived at settlement. Learned counsel for the Applicants and Respondent Nos.2, 3 and 4 have placed on record the consent terms signed by the Applicants and the Respondent Nos.2, 3 and 4 and their respective counsel, which read thus:

CONSENT TERMS

1. Parties herein have agreed and declared that the other two partners Mrs. Chandrika Ganesh Chandan and Mr. Ganesh N Naik shall retire themselves from the said partnership deed and execute and sign retirement cum admission deed in favour of Applicants in relation to partnership firm, 'Kollur Food Products' with

immediate effect without passing any account. The Applicants may admit new partner with a view to run the business “Kollur Food Products”. All the expenses for Retirement of partner and admission of new partner would be borne by the Applicants only. Applicants undertake that after retirement of two partners Mr. Ganesh N Naik and Mrs. Chandrika Ganesh Chandan of the said firm, Applicants will do ROC (Registrar of Firms) filing of retirement cum admission deed and should provide certified copy of acknowledgement and all relevant documents to the other partners Mrs. Chandrika Ganesh Chandan and Mr Ganesh N Naik.

2. By executing retirement cum admission deed the applicants declared that they will be solely responsible for all liabilities of ‘Kollur Food Products’ interalia including (a) Canara Bank Over Draft, Current Account & Term Loan complete Outstanding amount along with interest and penalty as on date pertaining to Account Number: 1520261006069, 1520201001669 and 1520755000030. (b) All unpaid Accounts Payable to Suppliers along with interest and penalty as on date. (c) All unpaid Government Taxes i.e. : GST, TDS, Sales Tax, Licenses fees etc. along with interest and penalty if any. (d) All unpaid premises Rent, electricity bill, water bills etc. Not only the liabilities mentioned herein above but all liabilities/responsibilities of ‘Kollur Food Products’ would be borne by Applicants.

3. Applicants hereby declare that other partners of 'Kollur Food Products' i.e. Mrs. Chandrika Ganesh Chandan and Mr. Ganesh N Naik are not liable for paying any outstanding of 'Kollur Food Products' towards Canara Bank, Suppliers, stake holders, any claimant interalia including the statutory charges etc.

4. Applicants hereby undertake to handover "No dues Certificate" against Canara Bank Account Number: 1520261006069, 1520201001669 and 1520755000030 to other partners of 'Kollur Food Products' i. e. Mrs. Chandrika Ganesh Chandan and Mr. Ganesh N Naik from all the claimants interalia including the Canara Bank on or before 6 months from the date of filing the present consent terms.

5. Applicants hereby undertake that the Applicants will return following cheques of Mr. Ganesh N Naik which are in possession of the Applicants on the date of filing the present consent terms in this Hon'ble court:-

- A cheque bearing number 712965 of Canara Bank, Bangur Nagar branch having account number 1520101014722.
- A cheque bearing number 712966 of Canara Bank, Bangur Nagar branch having account number 1520101014722.
- A cheque bearing number 712967 of Canara Bank, Bangur Nagar branch having account number

1520101014722.

6. Applicant further agrees to withdraw the summary case number 1229 of 2022 and 1202 of 2022, unconditionally within 15(days) from the date of present consent terms, which have been filed before the Addl. Chief Metropolitan Magistrate, Borivali court room no.43 against Mr. Narsihma Subba Naik and Mrs. Sowmya Ganesh Naik and provide certified copy of the order.

7. The Applicants hereby withdraw all allegations made against Mr. Ganesh N Naik by the Applicants and through his Advocates vide multiple notices and letters sent to National Payment Corporation of India, (NPCI) i.e. the employer of Mr. Ganesh N Naik till date. The Applicant states that the said allegations were made against Mr. Ganesh N Naik erroneously without knowing the complete facts. The Parties hereto agree that the production of the copy of the order passed in the present Anticipatory Bail Application, would be sufficient proof for the said NPCI to accept withdrawal of all allegation against Mr. Ganesh Naik and NCPI can close all the proceedings if any initiated on the basis of said allegations made by the present applicant.

8. The Applicant may restart the business under the name and style of 'Kollur Food Products' either as proprietary concern or by inducting any other partner to run the business of manufacturing various kind of food

products, as per the own wish of the Applicants from the date of present consent terms. The Intervener and outgoing partners of Kollur Food Products shall extend all co-operation for completing the transfer of business of Kollur Food Products in favor of Applicant and shall appear before appropriate authorities and sign necessary document in that behalf upon the receipt of written letter from Applicants if so, requested by the Applicants in writing.

9. The computers, books of accounts and other ancillary items are in the police custody of Dindoshi Police Station. Both the parties hereby agree that the said computers, books of accounts etc., shall be handed over by investigating officer immediately to the Applicants after signing of the present consent terms.

10. The Applicants shall be entitled to use the machineries, plants, computers and the raw materials, etc without any claim or interference or objection from other two retiring partners i.e. Mr. Ganesh N Naik and Mrs. Chandrika Ganesh Chandan upon signing of the present consent terms.

11. Mr. Ganesh N Naik and Mrs. Chandrika Ganesh Chandan henceforth, will have no claim whatsoever relating assets (plant and machinery & Trademark, symbol, etc.) of the partnership firm and/or machineries and other articles of the firm and/or from the Applicant on signing of consent terms. The

Applicants will not be liable to pay any amount of money to other retiring partners in any manner whatsoever after filing of consent terms save and except the liability of the applicant to clear the pending dues of the said Firm as stated hereinabove.

12. After filing of consent terms and on clearance of dues of Bank along with fulfillment of point No. 4, 5, 6 & 7 as mentioned above without any deviation, the Applicants may file appropriate writ petition for quashing of FIR No. 1187 of 2022 before this Hon'ble Court and the first informant will file necessary affidavit required for quashing of the FIR and/or charge sheet. Applicants shall bear all the expenses towards the said proceeding for quashing of FIR and/or charge sheet.

13. Parties hereby agree and declare that they will withdraw all pending cases if any filed against each other.

14. Parties hereby agree and declare that they will withdraw all other notices which have been raised by each other on filing of consent terms.

15. Parties hereby agree and declare that if the Applicants failed to repay the loan within 6 months then the rights of the intervener and outgoing partners in Kollur Food Products and its assets would be automatically restore. The anticipatory bail has been granted to the present applicant on the basis of the present consent term and failure to abide the terms of

the present consent term shall be sufficient ground for cancelation of anticipatory bail granted to the applicant.

16. We state that we have agreed to the above terms out of our own free will and consent. There is no force or coercion exercised by any person upon us to enter into and agree to these settlement terms.

17. The parties state that these terms may be jointly accepted as solemn undertaking by both parties to this Hon'ble Court.

18. The parties state that the above information has been read over and explained to us in vernacular. We say that it is true and correct to the best of our knowledge and belief and the same is as per our instructions given to the advocate, in token of which we have affixed our signatures below.

19. Both the parties undertake that they shall not initiate any fresh/ new legal proceedings (either Civil or Criminal) against each other with respect to the subject matter of present issue as long as these terms are followed in letter and spirit.

20. In view of above full & final settlement and consent terms, it is hereby submitted that there are no other dues and claims of whatsoever nature against each other save and except the compliance of terms by both the parties mentioned in the Present Consent Terms

21. That both the parties to the present consent

terms undertake that they shall duly perform and abide by all the terms and conditions as contained in the present Consent terms and in case of breach of any of the terms and conditions as envisaged hereinabove, the party committing default shall be liable to be punished under the provisions of Contempt of Courts Act, 1971.

5. The consent terms are agreeable to the parties. Hence, the same are taken on record and marked 'X' for identification. Statements made in the said consent terms are accepted as an undertaking to the Court. Since the parties have settled the matter amicably, this is a fit case to exercise discretion under Section 438 of the Cr.PC.

6. Hence, the application is allowed on the following terms and conditions:-

(i) In the event of arrest of the Applicants in Crime No. 1187 of 2022 registered with Dindoshi Police Station, Mumbai, they shall be released on bail on executing PR bonds in the sum of Rs.20,000/- each with one or two sureties to the like amount;

(ii) The Applicants shall keep the Investigating Officer

informed of their current addresses and mobile contact numbers, and /or change of residence or mobile details, if any, from time to time.

7. The application stands disposed of.
8. The interim application stands disposed of.
9. This Court acknowledges and appreciates the efforts taken by Shri Gavand, learned APP in assisting the parties in arriving at an amicable settlement and in formulating the consent terms.

(SMT. ANUJA PRABHUDESSAI, J.)